IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 901.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

LENRY C. MURPHY, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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CONSTITUTION AND STATUTES INVOLVED.

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v.

HENRY C. MURPHY, *Respondent*.

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BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 11) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is not yet reported.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941 (R. 23). The petition for a writ of certiorari was filed

April 25, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether certiorari shall be granted to review a decision of the United States Court of Appeals for the District of Columbia, wherein the sole question presented was whether the respondent, an employee of the Federal Government, was domiciled in the District of Columbia on December 31, 1939, within the meaning of Section 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20 D. C. Code, 1929, Supplement V).

Statute Involved.

Sec. 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

SUMMARY OF ARGUMENT.

I.

The present case involves a statute limited in application and is not important:

(a) This Court does not ordinarily review cases arising under statutes limited to the District of Columbia.

(b) This Court has recently denied certiorari in a case presenting identical issues.

(c) The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a) The legislative history shows that Congress did not intend the statute to apply to Federal employees in the District of Columbia who have not abandoned State domiciliation.

(b) Respondent was not domiciled in the District of Columbia on December 31, 1939.

(c) The decision of the Court below is founded upon correct principles of law.

(d) The decision of the Court below operates equitably.

ARGUMENT.

I.

The present case involves a statute limited in application and is not important.

(a)

The statute involved is confined in its operation to the District of Columbia. Cases arising under such a statute are not ordinarily reviewed by this Court.

Del Vecchio v. *Bowers*, (1935) 296 U. S. 280, 285.

(b)

This Court has recently denied certiorari in a case involving the same petitioner presenting identical issues.

On May 20, 1940, this Court denied a petition for a writ of certiorari filed by the District of Columbia, wherein issues relating to the domicile of Federal employees in the District of Columbia were raised which were identical with those raised here.

Sweeney v. *District of Columbia*, ... App. D. C. ... 113 F. (2d) 25, *certiorari denied*, 310 U. S. 631.

(c)

The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

The respondent is a citizen of Michigan and domiciled in that State. Michigan has no income tax, whereas all but a few States have income tax systems and Federal employees from those States are subjected to State income taxation. It follows that the facts in this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a)

The legislative history of the statute in question indicates clearly that Congress did not intend that the statute should apply to Federal employees in the District of Columbia provided such employees have not voluntarily surrendered their State domiciles and voluntarily acquired domiciles in the District of Columbia.

The bill which was originally introduced in the House established the following basis of taxation:

> "(b) the tax to be imposed on all residents of the District of Columbia regardless of source of income." (Report of the House Conferees, Cong. Record, July

12, 1939. Vol. 84, Part 8, 76th Cong. 1st Session, p. 8971.)

The bill was amended while still in the House to exempt members of Congress and their immediate staffs.

A basis of taxation which would render liable all residents except members of Congress and their staffs was unacceptable to the Senate, and in conference agreement was reached upon the principle of taxing only those domiciled in the District of Columbia.

Since the change of the basis of taxation from residence to domicile originated in the Senate, it is important to set forth the explanatory statement of Senator Overton, who was Chairman of the Managers on the part of the Senate and in charge of its passage:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*" (Cong. Record, July 11, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8824.)

The same view as to the meaning to be given to the word "domicile" prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8973.)

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> > "'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic); so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong. 1st Session, p. 8974.)

To accept the contention of the petitioner as to the meaning of the term "domicile" is to disregard the plain intent of the Congress, and to substitute for the present statute the provisions of a bill which the Congress had rejected.

(b)

Respondent was not domiciled in the District of Columbia.

Respondent, Murphy, came to reside in the District of Columbia in 1935 for the purpose of rendering service to the Federal Government and has had the constant intent to return to Michigan upon termination of that employment.

The respondent has exercised his right of suffrage in Wayne County, Michigan, at all times since the establishment of his domicile in Michigan as his domicile of choice.

Of all the criteria as to domicile, the exercise of the right of voting is among the most important.

Shelton v. *Tiffin*, 6 How. 163 (1848).
Rollings v. *Rollings*, 53 F. (2d) 917, 60 App. D. C. 305 (1931).
Downs v. *Downs*, 23 App. D. C. 381 (1904).
Commonwealth v. *Emerson*, 1 Pear. (Pa.) 204 (1861).

It is true that the respondent in this case has paid no taxes to the State of Michigan. Michigan has no income tax and the respondent has no personal property or real property in Michigan. Thus, no taxes were owing to the State of Michigan.

The true test as to the retention of State domicile by a Federal employee residing in the District of Columbia has been announced in the case of *District of Columbia* v. *Sweeney*, — App. D. C. — 113 F. (2d) 25, 33; *cert. den.* 310 U. S. 631.

> "Except for the payment of taxes on his intangible personalty (the record does not show that Massachusetts taxes it at all except as to income) petitioner has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District on the taxable dates and that the taxes assessed against him as a domiciliary were invalid."

In the instant case, the respondent has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District of Columbia on December 31, 1939.

(c)

The decision of the Court below was founded upon correct principles of law.

In an exhaustive opinion which examined to its roots the question of the domicile of Federal employees in the District of Columbia, the United States Court of Appeals for the District of Columbia enunciated the correct principle of law as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"
>
> *Sweeney* v. *District of Columbia*, — App. D. C. —, 113 F. (2d) 25, 32; *cert. den.* 310 U. S. 631.
>
> *See also Lesh* v. *Lesh*, (1903) 13 Pa. Dist. Rep. 537, 540.
>
> *Atherton* v. *Thornton*, (1835) 8 N. H. 178 and authorities cited in Kennan on Residence and Domicile (1934), Sections 67 and 68, pp. 142-145.

It is pertinent to note that most States require domicile for voting and have constitutional provisions preventing loss of "residence" for voting purposes by absence in Government service. Such a provision appears in Article III of the Constitution of the State of Michigan. Section 2 of that Article reads:

> "No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this State, nor while

> engaged in the navigation. * * *" (The Compiled Laws of the State of Michigan, 1929, p. 203.)

The argument of petitioner that the domicile of an employee of the Federal Government should be determined by the same general rules applicable to persons in private employment is faulty for two reasons. First, the question before this Court is as to domicile of Federal employees in the District of Columbia and not elsewhere. Second, it leaves the inference that one may be domiciled for purposes of taxation in one jurisdiction and domiciled for other purposes in another jurisdiction.

One of the few propositions on the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*, 232 U. S. 619, 625 (1914) stated:

> "The very meaning of domicile is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."

> See also Beale, Conflict of Laws (1935) Vol. I, p. 123, Kennan on Residence and Domicile (1934), Section 13, pages 34-35.

In its discussion of the proposition of domicile of Federal employes in the District of Columbia "for purposes of taxation" the petitioner advances the novel proposition that there is a distinction between civil and political domicile.

This proposition was condemned by the United States Court of Apeals for the District of Columbia in the case of *Sweeney* v. *District of Columbia*, — App. D. C. — 13 F. (2d) 25, 30; *cert. den.* 310 U. S. 631, in the following words:

"... the suggested distinction is more theoretical then practical, argumentatively specious than safely tenable..."

(d)

The decision of the Court below operates equitably. To reverse that decision would result, in the majority of cases, in subjecting the income of Federal employees in the District of Columbia to double taxation quite apart from the Federal income tax.

On March 27, 1939, in the case of *Graves* v. *New York ex rel. O'Keefe*, (306 U. S. 466) this Court held that there was no constitutional prohibition against the taxation of Federal salaries by the States. On April 12, 1939, sixteen days after the decision was handed down, the Public Salaries Act was approved (53 Stat. (Part 2) 574) making State salaries subject to Federal taxation and consenting to State taxation of Federal salaries. Shortly afterward most of the states subjected Federal salaries to taxation. (Michigan, which is the State of the respondent's domicile, is one of the very few States which has no income tax system.)

The practical question in the case of Graves v. O'Keefe was whether individuals deriving Federal salaries shall be placed in a preferred cateory by exempting such salaries from State taxation. The answer was in the negative. The practical question in this case was whether individuals deriving salaries from Federal employment in the District of Columbia should be placed in an especially onerous category by subjecting them to income taxation in the District of Columbia, as well as in the States of domicile. The answer by the Court below was in the negative. The decision is just and should not be disturbed.

CONCLUSION.

It is respectfully submitted that because the present case is not important and involves a statute limited in application to the District of Columbia, and because the decision of the Court below is correct on its merits, the petition for a writ of certiorari should not be granted.

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Attorney for Respondent.